

DOCUMENT RESUME

02681 - [A1752768]

[Protest against Refusal to Extend Proposal Due Date When Inclement Weather Prevented Timely Hand Delivery]. B-188354. June 15, 1977. 3 pp.

Decision re: Ecology and Environment, Inc.; by Robert F. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government (806).

Organization Concerned: National Science Foundation.
Authority: B-188321 (1977).

Protester claimed that the procuring agency abused its discretion in refusing to extend the proposal due date because of severe weather conditions. The protest was denied because announcement of the procurement was made approximately 9 months before the due date, and copies of the request for proposals were distributed to permit 5 weeks' preparation time.
(Author/QM)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

P.L. II
Ave 12

FILE: B-188354

DATE: June 15, 1977

MATTER OF: Ecology and Environment, Inc.

DIGEST

Protest that agency abused its discretion in refusing to extend due date for receipt of proposals, due to extraordinary weather conditions, or that proposal should be considered notwithstanding that it was late is denied.

Ecology and Environment, Inc. (E&E) protests the rejection by the National Science Foundation (NSF) of its late proposal submitted in response to Solicitation No. 77-102.

E&E's proposal was hand-delivered in Washington, D.C. 45 minutes past the time set for receipt of proposals as the result of transportation disruptions caused by a major snow storm which struck the vicinity of E&E's Buffalo, New York, home office the previous day. E&E contends that in view of the extraordinarily severe weather conditions which existed, and the effort which it expended in attempting to deliver its proposal on time, it should not be "penalized" for the late submission.

The instant solicitation was for the preparation of an environmental impact statement on the United States Antarctic Research Program, and established 4:00 p.m., Tuesday, January 11, 1977, as the closing date for receipt of proposals. On the afternoon of Monday, January 10, an E&E official telephoned the NSF Project Officer and the Contract Specialist whose names appeared in the RFP, and, according to the E&E official, "I indicated my concern that a transportation delay had developed and requested any advice he might have regarding possible options such as an extension of the submission closing date, telegram or facsimile transmission."

After discussion within NSF, its Contract Specialist called the E&E official and advised him that the time for receipt of proposals would not be extended. Although the Contract Specialist made the statement during this conversation that he would be in his office until 5:00 p.m., according to NSF he "did not instruct the contractor to have its proposal delivered by 5 o'clock, but in fact he reaffirmed the 4 PM closing time, reiterated that consideration was not being given to extend the closing date, and encouraged E&E to make every effort to submit its proposal on time."

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E&E's understanding of this conversation is not entirely clear. E&E asserts that it was told that if its proposal were delivered before 5:00 it would be "accepted." At the same time, E&E refers in its protest to 4:00 as the "prescribed deadline" and admits that the Contract Specialist "advised that there was no plan to extend the submission closing date beyond the scheduled 4:00 p.m. * * *."

Of course, the Contract Specialist could not properly extend the closing date for the benefit of only one offeror. It does not appear from E&E's protest or its actions prior to the closing date that E&E placed any serious reliance upon a 5:00 p.m. closing time.

The record shows that following its telephone conversation with the Contract Specialist, E&E did not slacken its efforts to submit its proposal. On Monday evening, it sent two mailgrams to NSF which were intended to serve as its cost and technical proposals in the event its formal proposal did not arrive on time. (Both mailgrams were received after the closing date.) On Tuesday, when a scheduled airline flight was canceled, E&E had its proposal placed on a substitute flight which was to arrive at Washington National Airport no later than 3:30 p.m., and which was to be met by an E&E representative who was to hand carry the proposal to NSF. However, that flight did not arrive until 4:00 p.m., and although the flight was met by the E&E representative, the proposal was not received at NSF until 4:45 p.m.

The following morning, the contracting officer concluded that the lateness in receipt of E&E's proposal could be waived as "minimal". This conclusion was relayed to E&E. Later that day, prior to the opening of proposals, NSF's Deputy Division Director of Grants and Contracts reviewed the situation and concluded that the "late proposals" provision in the RFP did not permit exceptions for severe weather or other unforeseen circumstances within or beyond the control of an offeror. E&E was then advised that its proposal was deemed late and could not be considered for award.

We recently considered another protest from a Buffalo-area firm concerning the late submission of a proposal which was attributable to severe winter weather. Falcon Research & Development Co., B-188321, May 4, 1977, 77-1 CPD _____. In Falcon, we observed:

"Where it is anticipated that inclement weather will prevent timely hand delivery of an offer or bid, the appropriate relief, if any, is an extension of the closing or bid opening date. If due consideration, in fact, is given to such a request prior to the due date

and is denied, we believe it would adversely affect the integrity of the competitive procurement system, if a late bid or offer thereafter is permitted to be considered."

Here, an extension was requested and denied. For the following reasons, we believe the agency did not abuse its discretion in denying the extension.

We are advised that on April 15, 1976, NSF published an announcement in the Commerce Business Daily (CBD) which provided public notification of the services required and which requested interested parties to submit statements of qualifications. On October 22, 1976, NSF published a second notice in the CBD inviting interested parties to request copies of the instant RFP. Almost a month later, NSF received a letter from E&E, requesting that copies of the RFP be sent to certain individuals at its Buffalo and Anchorage, Alaska offices. E&E requested that in the event only one copy was available, that it be sent to its Buffalo office.

On November 24, 1976, NSF mailed copies of the RFP to 73 offerors submitting requests, including E&E. In view of the large number of requests, NSF sent only one copy to E&E. We note that through error, that copy was sent to the Anchorage, Alaska office, rather than to the Buffalo office as requested. Nevertheless, a copy was mailed to a person identified by E&E as having some responsibility for the project.

Slightly more than a month after copies of the RFP were mailed, a private consultant acting as agent for E&E picked up a copy of the RFP at NSF's Washington, D. C. office. Apparently, it is this copy to which E&E refers when it states in its protest that "our office" (Buffalo) did not receive the RFP until December 30, leaving E&E a week to prepare its proposal.

The existence of this procurement was publicized approximately nine months before proposals were due and copies of the RFP were distributed in time to permit about five weeks for proposal preparation. Although E&E's copy of the RFP was not sent in exact accordance with its instructions, it was mailed to one of two individuals identified by the company as having an interest in this procurement. In view of these circumstances, and that a number of proposals were timely received, we do not believe NSF abused its discretion in refusing to extend the due date.

E&E's protest is therefore denied.


Acting Comptroller General
of the United States